?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
%Dated: 19.03.2019

Reserved on 12.03.2019
Pronounced on 19.03.2019
*CORAM
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

+Crl.A.(MD).No.269 of 2013

#K.M.Subramanian, I.A.S.
...Appellant

Vs.

$State of Tamil Nadu
rep. by the
Deputy Superintendent of Police,
Vigilance and Anti~Corruption Dept.,
Madurai Detachment
(Crime No.12/2012) ...Respondent

Prayer:~ This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records of the Special Court for Trial of Prevention of Corruption Act Cases, Madurai in Special Case No.23 of 2011 dated 07.08.2013 convicting the appellant u/s 7 and 13(1)(a) & (d) r/w 13(2) of Prevention of Corruption Act, 1988 and sentenced him to undergo rigorous imprisonment for one year (two counts) and also pay a fine of Rs.1,000/~ for each count and in default of payment of fine, the accused shall undergo simple imprisonment for 3 months, hear the matter and set aside the finding and acquit the accused.

!For Appellant : Mr.R.Shanmugasundaram, senior
counsel for Mr.N.Selvam
^For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor
:JUDGMENT
This appeal is directed against the judgment of the learned Special Judge for Trial of Prevention of Corruption Act Cases, Madurai in Special Case No.23 of 2011 dated 07.08.2013.

2.For the sake of convenience, the parties are referred to as per the rank mentioned in the trial Court. The gist of the charges framed against the appellant/A1 and findings/sentence of the trial Court are as noted below:

Name of Accused
Charges
Finding
Sentence
A1.

K.M.Subramanian
Secs.7 and 13(1) (a) & (d) read with 13(2) of Prevention of Corruption Act, 1988.
Found guilty under
Secs.7 and 13(1) (a) & (d) read with 13(2) of Prevention of Corruption Act, 1988.
to undergo rigorous imprisonment for one year (two counts) and also pay a fine of Rs.1,000/~ for each count and in default of payment of fine, the accused shall undergo simple imprisonment for 3 months
3.The brief facts of the prosecution case are as follows:
(i)The first accused is an I.A.S. Officer in Tamil Nadu Cadre and working as Commissioner of Social Welfare Department, Government of Tamil Nadu from 27.06.2001 to 27.10.2002. The second accused is an Industrial Co~operative Officer. While the first accused was working as Commissioner of Social Welfare Department, a monthly review meeting was conducted at Chennai on 24.09.2002 for the officials of Industrial Co~operative of Weaning Food Societies and in that meeting, they had decided to make an official visit to Souther Districts Industries with an intention to collect illegal gratification from the officials of the above Societies. In order to execute his intention, he instructed the second accused to convey the message to the Officers in the Districts of Tirunelveli, Virudhunagar and Madurai. Accordingly, the second accused instructed the Officers. The first accused had visited the said Districts during 24.10.2002 and 25.10.2002 and during his visit, he demanded a sum of Rs.5,000/~ from each of the Industrial Co~operative Officers and obtained a totally a sum of Rs.1,05,370/~ other than the legal remuneration, as a motive or reward to do an official act in the exercise of his official function and to desist from taking action against the officials for their non compliance in maintaining records and for their failure in adhering the instructions and rules made thereunder relating to the functioning of the Co~operative Societies.

(ii)During the visit of the first accused, on 25.10.2002 at about 1.00 p.m., P.W.23, Mutharasu, Inspector of Police, Vigilance and Anti~Corruption, Madurai has received an information from one Srinivasagam, Deputy Superintendent of Police, V & AC Department (since deceased) that the first accused had come to Southern Districts for inspection of Nutritious Meal Centres and the 1st accused was compelling each Centre to pay a sum of Rs.5,000/~ and P.W.23 was instructed to verify the genuineness of the same. Thereafter, the said DSP procured two official witnesses viz., P.W.4 Samuel Sunder Singh, Deputy Inspection Cell Officer and P.W.5 N.Ganesan, Superintending Engineer, Tamil Nadu Electricity Board (TNEB), Madurai and they came to the vigilance office at about 4.30 p.m. on 25.10.2002. P.W.4, P.W.5, Rajkumar and Shanmugavel and other police personnel along with said DSP Srinivasagam were keeping watch over the Circuit House. AT about 6.00 p.m., 1st accused arrived at the Circuit House in a Santro Car. P.W.11 Ganesan also accompanied him and the 1st accused straightaway went to Suite No.7A and about 15 persons were found entering into the suite and coming out one after another. Thereafter, 1st accused went out in a Qualis car and returned at about 9.45 p.m. and about 5 or 6 persons, who were waiting outside entered into the suite one after the other and came out. At that time, two persons viz., Alagarsamy and P.W.11 Ganesan, who came out of the

suite were stopped by P.W.4 just opposite to the office of DIG. When they were enquired by P.W.4, P.W.11 Ganesan told that he paid Rs.5,000/~ and P.W.13 Selvaraj, Othakadai ICO and P.W.12 Gunasekaran, Manamadurai ICO had also paid Rs.5,000/~ each to 1st accused.

(iii)P.W.4 obtained statements from P.W.s11 to 13. P.W.13 Selvaraj in his statement had stated that it was the second accused Jegadeesan, Chinnalapatti ICO instructed him to pay Rs.5,000/~ per unit to the 1st accused. Thereafter, at about, the Deputy Superintendent of Police along with P.Ws.4 and 5 and others went to Suite No.7A and knocked the door. When the 1st accused opened the door, DSP informed that they had come to enquire about the rceipt of money by the 1st accused from the persons attached to Nutritious Meal Centres and hence, the 1st accused brought a yellow colour cloth bag from his suit case and handed over the same to DSP. On search, DSP found a gold dollar weighing about « sovereign depicting Goddess Meenakshi and the was seized. A sum of Rs.5,370/~ was also produced by the 1st accused. When the 1st accused appealed that he was unwell, DSP arranged for a medical team under the leadership of Dr.Balakrishnan and treatment was given to him. At about 6.15 a.m. on the next day i.e. on 26.10.2002, 2nd accused Jegadeesan (since deceased) appeared before P.W.4 and gave a statement to the effect that he brought Rs.5,000/~ to be paid to 1st accused. His statement was marked as Ex.P21. At about 6.30 a.m., P.W.14 Bose Ramalingam, Sivagangai ICO gave statement to P.W.4 besid es producing Rs.5,000/~ which was brought by him to the Circuit House to be paid to 1st accused. His statement was marked as Ex.P14.

(iv)Thereafter, DSP Srinivasagam seized the said articles besides seizing the three torn Khaki colour envelopes and one white colour envelope from the dust bin. On perusal of such covers, in one of the cover, the name ?Rajendran? was found written and in two covers also found written as ?Othakadai? and ?Irudhayaraj? respectively. P.W.4 prepared the proceedings for having conducted the search and copy of the same was furnished to 1st accused and a case was registered in this connection by the Deputy Superintendent of Police, Vigilance and Anti Corruption, Madurai in crime No.12 of 2002 for the offences under Sections 13(1)(a)(d) read with 13(2) of Prevention of Corruption Act, 1988. The FIR is marked as Ex.P24.

(v)P.W.17, Kumarasamy, Deputy Superintendent of Police, Sivagangai has taken up the case in crime No.12 of 2002 on 26.10.2002 and he perused the case records and examined the prosecution witnesses and some of the prosecution witnesses were produced before the learned Judicial Magistrate No.2, Madurai and their 164 Cr.P.C. statements were recorded. Thereafter, he handed over the investigation to P.W.26, Mohan, for further investigation. P.W.26 conducted further investigation and he examined other witnesses including P.Ws.1 and 2 and obtained sanction orders to prosecute the case as against the 1st and 2nd accused and after completion of investigation, he laid charge sheet as against the 1st and 2nd accused for the offence stated above.

4.To substantiate the charges against the accused in trial, on the side of the prosecution, P.Ws.1 to 26 were examined and Exs.P.1 to 34 were marked

and M.Os.1 to 6 were produced. During the trial, the 2nd accused died and the charges framed against him were abetted. When the 1st accused was questioned about the incriminating circumstances and evidence, he denied the charges levelled against him. In order to disprove the case of prosecution, the 1st accused examined D.W.1, however, no document was marked.

5.Upon consideration of the oral and documentary evidence, the learned Judge found guilty of the 1st accused that the 1st accused being a public servant has obtained illegal gratification other than legal remuneration from his subordinate officials for not taking action against the officials for their non~compliance and irregularities in their regular course of work and further held that the 1st accused by corrupt and illegal means and by abusing his official position obtained illegal gratification from various officials other than legal remuneration for himself and thereby he was committed criminal misconduct. On the above findings, the learned Special Judge convicted the 1st appellant and sentenced him to undergo to undergo rigorous imprisonment for one year (two counts) and also pay a fine of Rs.1,000/~ for each count and in default of payment of fine, the accused shall undergo simple imprisonment for 3 months for the offences under Sections 7 and 13(1) (a) & (d) read with 13(2) of Prevention of Corruption Act, 1988. Aggrieved over the above said conviction, the 1st appellant has preferred the present appeal.
6.Heard the learned senior counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent.

7.Assailing the findings of the trial Court, the learned senior counsel Mr.R.Shanmugasundaram contended that the procedure contemplated under the vigilance manual as well as Chapter 12 of Cr.P.C. was not followed for the 1st accused, who is an I.A.S. Officer and without following the procedure and the manner in which the trap conducted on 25.10.2002 is not admissible one and with a malafide intention, the officials colluded each other deposed against the appellant in order to satisfy the persons, who has given instructions.

8.Further, the learned senior counsel appearing for the appellant submitted that the petitioner is a Commissioner of Social Welfare and Nutritious Meal Programme Department and he did not demand any money from any officials. As per the Government instructions, he decided to visit the places for the purpose of effective administration in the Districts of Tirunelveli, Virudhunagar and Chennai for testing orphanage students knowledge, testing teachers teaching techniques and serving food to the children and also for checking records and conducting meeting to EOSW & RWOs in Virudhunagar District and also for courtesy meeting with District Collector relating to the orphanage compound wall building and performance of the staff in Government Orphanage, Virudhunagar. The tour programame was fixed during 24.10.2002 to 25.10.2002. After completing the programme, when the appellant at the Circuit House, Madurai as per the tour programme, the vigilance team came.

9.The learned senior counsel further submit that to attract the offence punishable under Sections 7, 13(1)(a) and (d) of Prevention of Corruption

Act, the prosecution has to establish that the accused Officer must made a demand of any gratification other than legal remuneration and such gratification was accepted by him as a motive or reward for doing of forbearing to do any official act. In the present case, the said demand and acceptance was not proved by the prosecution. Even as per the prosecution case, 2nd accused demanded illegal gratification on behalf of the 1st accused and that has also not been proved through any credible evidence. Proof of demand is sine~quo~non. Mere recovery of amount is not sufficient to implicate the accused in the present case. The Hon-ble Apex Court repeatedly held that mere receipt of money will not attract the offence under Sections 7 and 13(1) (a) & (d) read with 13(2) of Prevention of Corruption Act, 1988. In the present case, no evidence has been let in by the prosecution to prove either the demand for doing an official duty or the acceptance for a motive or reward for doing or forbearing to do any official act. Even a reading of Prevention of Corruption Act makes it clear that as a motive or reward for doing or forbearing to do any official act or for showing of forbearing to show in the exercise of his official functions favour of disfavour to any person for rendering or attempting to render any service. The acceptance of bribe must be for a motive or reward. There must be an official act expected to be done for the money received by the public servant. The prosecution witnesses give different reasons for paying the money. Two witnesses deposed that for Deepavali Gift they paid the money and other three persons, for not to take any coercive steps. Therefore, the testimony cannot be relied upon and ought to have been rejected.

10.The learned senior counsel further contended that the prosecution has not established the motive for receiving the money and there is absolutely there is no cogent evidence to prove the existence of any official act for which the money was demanded or accepted by the 1st accused. The prosecution witnesses in their evidence simply said that they gave money to the accused and the accused accepted. However, the prosecution miserably failed to establish the same. The prosecution has not established the essential ingredients with regard to the demand and acceptance beyond reasonable doubt by adducing credible evidence. The burden lies upon the prosecution to prove the case and thereafter, presumption will shift to the accused and the presumption applies only in respect of Section 7 of the Prevention of Corruption Act and Sections 13(1)(a) & (d) are not applicable and independently, the prosecution has to establish the ingredients of Sections 13(1)(a() & (d) of Prevention of Corruption Act.

11.The learned senior counsel further submitted that though the trial Court framed six charges, three charges viz., charges 1,3 and 5 alone alleged that on 25.10.2002 in order to screen the mistakes and for not taking any action, the 1st accused received illegal gratification from Industrial Co~ operative Officers, said to have received a sum of Rs.1,05,370/~ and 4 grams gold coin through 2nd accused and thus committed the offence punishable under Section 7 of P.C.Act. In order to establish the prosecution case, the prosecution examined P.Ws.4, 10 to 13 and 15 and 24. Amongst above witnesses, P.W.15 is not an Industrial Co~operative Officer and he is a provate person and hence, the evidence of P.W.15 cannot be relied upon, since no charge was framed as against the 1st accused in respect of payment of

money by P.W.15. There is no corroboration in between P.Ws.10 to 13 and 24. Their evidence categorically established that every one voluntarily paid money without any demand by the appellant for doing any official favour and there is no motive or reward on the part of the 1st accused to do any official act or forbearing to do any act in order to attract the offence under the Prevention of Corruption Act to any of the prosecution witnesses since all witnesses categorically stated that no complaint is pending against any of them and when the 1st accused visited the Societies, no deficiencies were found by the 1st accused. Hence, there prosecution has failed to prove that the money has been paid to the 1st accused only for illegal gratification. In support of his contention, the learned senior counsel relied upon the following decisions:
1.(1979)4 SCC 725 ? Surajj Mal Vs. State (Delhi Admn.)
2. (2009)3 SCC 779? C.M.Girish Basu Vs. CBI
3.(2009)6 SCC 587 ? A.Subair Vs. State of Kerala
4.(2011)6 SCC 450 ? State of Kerala & another Vs. C.P.Rao.
5.(2014)13 SCC 55 ? B.Jayaraj Vs. State of Andhra Pradesh
6.(2016)12 SCC 150 ? V.Sejappa Vs. State
7.(2002) 1 SCC 351 ? Munshi Prasad and others Vs. State of Bihar.
Thus, the learned senior counsel prayed for allowing of the appeal and acquittal of the appellant.

12.Per contra, the learned Additional Public Prosecutor appearing for the State would submit that each Districts consists of District Cells. The primary duty of the District Cell is to conduct surprise checks at sensitive points in various departments, public undertakings for the purpose of achieving the preventive effect in vigilance work and in toning up the administration. As per the vigilance manual, with a view to improving the efficiency of administration in various Departmental Offices at Regional, District and Divisional level, District Inspection Cells, functioning under the control of the District Collectors were set up in 1975 in 10 districts of the State. Each District Cell consists of a Special Officer and a Superintendent/Tahsildar. In the present case, P.W.4 is a Head of District Inspection Cell, who on receipt of information from P.W.23 was instructed to verify the genuineness of the information that the first accused had come to Southern Districts for inspection of Nutritious Meal Centres and the 1st accused compelling each of the Industrial Co~operative Officers of Tirunelveli, Virudhunagar and Madurai Districts to pay a sum of Rs.5,000/~.

13.On such information, P.W.23, P.W.4, P.W.5 and other official witnesses along with DSP Srinivasagam were watching over the Circuit House and they recorded the statements of P.Ws.11 to 13 and they found that some of the Industrial Co~operative Officers paid a sum of Rs.5,000/~ each to the 1st accused for not taking coercive steps during his visit. Therefore, the case has been registered on the next day i.e. on 26.10.2002. In order to prove the demand and acceptance of illegal gratification, the prosecution mainly relied upon the evidence of P.Ws.10 to 13 and 24 and apart from the official witness, the evidence of P.W.15, who is an individual and supplying millets to the Societies also paid a sum of Rs.15,000/~ also corroborated each other with regard to demand and acceptance of the bribe amount. Particularly, P.W.12, in his evidence clearly deposed that the second accused is the

General Secretary of their Societies and he instructed to reduce the anger of the 1st respondent, all the ICOs have to pay a sum of Rs.5,000/~ each for their welfare. Accordingly, on 25.10.2012, P.W.12 met the 1st accused at Circuit House and paid the amount. Further, when P.W.13 entered into Circuit House, where the 1st accused stayed, the 1st accused asked him whether Jagadeesan conveyed the information, for which, P.W.13 told ?yes? and he further asked whether he brought money, for which, he kept the cover containing a sum of Rs.5,000/~ in the teapoy. Similarly, P.W.24,Irudhayaraj categorically stated that the first accused asked whether he brought Rs.5,000/~ as instructed by Jagadeesan and he gave the cover containing of Rs.5,000/~, wherein, he already filled his name and designation. The said covers were recovered and the same as Exs.22 and 23. Thereafter, the investigation team went inside the Circuit House and recovered the amount of Rs.1,05,370/~ and the statements were recorded from the prosecution witnesses and all the witnesses clearly corroborated the demand and payment of bribe by the 1st accused and through A2, the said amount has been accepted by the 1st accused as motive for not to take any coercive steps against the ICOs. Hence, the prosecution has clearly established the case with regard to the demand and acceptance. In support of his contention, the learned Additional Public Prosecutor relied upon the following judgments:

1.AIR 1958 Supreme Court 61 ? State of Madras V. Vaidyanatha Iyer
2.AIR 1964 Supreme Court 575 ? Dhanvantrai V. State of Maharastra
3.(1986) 2 Supreme Court Cases 716 ? R.S.Nayak Vs. A.R.Antulay
4.(1997)9 Supreme Court Cases 477 ? C.K.Damodaran Nair Vs. Govt. of India

14.The learned Additional Public Prosecutor appearing for the State would further submit that the appellant accepted the gratification from P.Ws.10 to 13 and 24 in consenting mind and the evidence also clearly corroborated each other the 1st accused through the 2nd accused conveyed the message to ICOs for pay a sum of Rs.5,000/~ each to A1 in order to reduce his anger. Accordingly, A1 received a sum of Rs.5,000/~ each from officials. Even the officials voluntarily offered any gratification in the public services, that would amount to acceptance within the meaning of Section 7 of P.C.Act. In the present case, the demand and acceptance were clearly established by the prosecution. In support of his contention, he relied upon the following decision:
1.(2015) 7 Supreme Court Cases 283 ? State of A.P. V. P.Venkateshwaralu.
Thus, the learned Additional Public Prosecutor prayed for dismissal of the appeal.
15.Upon careful re~assessment of the evidence and the judgment of the Trial Court and other materials on record and submissions made by the learned counsel appearing for the parties, the following points arise for consideration in this Criminal Appeal:
(i) Whether the prosecution established the demand and acceptance by the appellant from P.Ws.10 to 13 and 24?
(ii) Whether the Trial Court was right in finding the appellant guilty for the offence under Sections 7 and 13(1) (a) & (d) read with 13(2) of Prevention of Corruption Act, 1988.

(iii)Whether the conviction and sentence of the Trial Court warrant any interference?

16.The present case is a peculiar case, unlike a regular trap case. In a regular trap case, the prosecuting agency registered a crime based on the complaint preferred by the defacto complainant and thereafter they arrange the shadow witnesses in order to establish the trap conducted by them. However, in the present case, the appellant is an I.A.S.Officer and he is a Chief Executive of the Social Welfare Department viz., the Commissioner of Social Welfare and Nutritious Meals Programme, Government of Tamil Nadu. On 24.09.2002, a meeting was conducted by the Social Welfare Department. On that day, the officials including ICOs attended the meeting and in that meeting, all the ICOs of Tirunelveli, Virudhunagar and Madurai Districts are conveyed that the appellant/1st accused decided to visit Tirunelveli, Virudhunagar and Madurai Districts during 25.10.2002 and 26.10.2002. After completing the meeting, 2nd accused, who was working as ICO, Chinnalapatti and General Secretary of Industrial Co~operative Societies conveyed the message that on the date of visit of the 1st accused, all ICOs have to pay a sum of Rs.5,000/~ each to avoid coercive steps against them for the mistakes committed by them in their official work and the said message was exchanged between the ICOs of the said three District.

17.The said message was informed to the Directorate of Vigilance and Anti Corruption Department, Madurai. One Seenivasagam (since deceased), DSP has received the message as if the appellant decided to visit each and every Noon Meal Centres of Southern Districts and he compelled the ICOs to pay a sum of Rs.5,000/~ each for the festival of Deepavali and to verify the genuineness of the message and he instructed P.W.23 Mutharasu, Inspector of Police, to verify the genuineness of the said message. The said information was conveyed to P.W.4, District Cell Officer and arranged official witnesses and decided to watch the movement of the 1st accused. After completing the inspection, the 1st appellant reached Madurai Circuit House at about 6.00 p.m. in a Santro car and went out at 7.15 p.m. in a Qualis car and again, at about 9.45 p.m., he returned to Circuit House. At that time 5 or 6 persons, who were waiting outside were entering into suite No.7, where the appellant stayed and came out. At that time, P.Ws.4 and 23 secured P.W.11, Ganesan, who came in the car along with the appellant and on enquiry, he revealed that he paid a sum of Rs.5,000/~ to the 1st accused and his statement was also recorded and marked as Ex.P3, in which, P.Ws.4 and 5 were duly signed. Same way, P.W.12, Gunasekaran, Othakadai ICO, P.W.13Selvaraj, Kallikudi ICO have paid a sum of Rs.5,000/~ each to the 1st accused and their statements were also marked as Exs.P4 and 5, in which also P.Ws.4 and 5 were duly signed as witnesses.

18.Thereafter, the vigilance parties were decided to enquire the accused Officer and they entered in to the Suite and recovered a sum of Rs.1,05,730/~ (M.O.1)including three envelopes covers and also a gold dollar depicting Goddess Arulmigu Meenakshi weighing 4 gms (M.O.2) through seizure mahazer Ex.P6. On the next day i.e on 26.10.2002, at about 6.15 a.m., 2nd accused appeared before P.W.4 and gave statement as if he prepared to give Rs.5,000/~ to the 1st accused and he handed over the same to him. His

statement was marked as Ex.P21. Thereafter, at about 6.30 a.m. P.W.14, Bose Ramalingam, Sivagangai ICO appeared and gave statement, which was marked as Ex.P14. After obtaining signatures and furnishing copies to the appellant, D.S.P.Srinivasagam registered a case in crime No.12 of 2002 for the offences under Sections 13(1)((d) read with 13(2) of Prevention of Corruption Act, 1988. F.I.R. is marked as Ex.P24. Thereafter, P.W.17 conducted further investigation and after completion of investigation, he laid charge sheet against the accused persons.

19.In these background, now, it has to be analysed the testimony of the prosecution witnesses. P.W.1 is the sanctioning officer, sanctioned prosecution to proceed against the case. In his evidence, he deposed that after receipt of advice of Central Vigilance Commission recommending grant of sanction of prosecution for A1, after coming to the conclusion that prima facie case for the alleged offence under the P.C.Act had been made out against A1 and after the competent authority approved the proposal for according sanction for the prosecution of A1 before the Court of law, P.W.1 issued order No.107/7/2004~AVD.I, dated 27.05.2005 so as to enable the prosecuting agency to launch criminal prosecution against A1 under P.C. Act. The sanction order was marked as Ex.P1. P.W.2 Mr,Vaithialingam has forwarded the file to the Government of India for obtaining sanction for the prosecution in respect of A1. P.W.4 is the District Cell Officer and P.W.5 is the official of TNEB and their evidence are in respect of recording statements of P.W.11, P.W.12 and P.W.13 on 25.10.2002. P.W.6 and 7 are the officials working in the Social Welfare Department, Virudhunagar and Tirunelveli respectively and they accompanied with the 1st accused during his visit at Virudhunagar and Tirunelveli Districts. P.W.8 Packiam is working as Sweeper at Circuit House, Madurai. Even though she turned hostile, she deposed that on 25.10.2002, A1 occupied the Suite No.7A. P.W.9 Mr.Kothandapani has provided the Santro Car belonging to his son~in~law to the 1st accused by deputing a driver by name Porko to go to Madurai from Tirunelveli on 25.10.2002, since they know each other earlier.

20.P.Ws.10 to 13 and 24 are ICOs, who in their evidence deposed that they have paid a sum of Rs.5,000/~ each to the 1st accused as per the instructions of the 2nd accused. P.W.14 Bose Ramalingam is the ICO of Chinnalapatti has deposed that he prepared to give Rs.5,000/~ as told by other ICOs. P.Ws.16, ICO of Manamadurai has stated that she heard the information that the 1st accused decided to visit Tirunelveli, Virudhunagar District and each ICOs have to pay a sum of Rs.5,000/~ to the 1st accused as Deepavali gift. However, both P.W.14 and 16 have not paid any amount. In order to support the prosecution case, they were examined. P.W.18 Senthur is the incharge of the Circuit House, Virudhunagar and he deposed that the 1st accused stayed there and the room allotment register is marked as Ex.P20. P.W.19 and 22 are the doctors of Madurai Rajaji Hospital, who gave treatment to the 1st accused in the Circuit House, Madurai during the trap proceedings. P.W.20 Alexander in his evidence has deposed that the 1st accused stayed in Suite No.7A of Circuit House, Madurai on 25.10.2002. P.W.21 Savithiri has deposed that she issued the copy of tour programme of the 1st accused to the investigating agency. That letter is marked as Ex.P17. P.W.23, Mutharasu, Inspector of Police accompanied DSP Srinivasagam along with P.Ws.4 and 5

during the entire trap proceedings and he narrated the entire circumstances and happenings on 25.10.2002 and 26.10.2002. P.W.25 was the Judicial Magistrate No.2, Madurai, who recorded 164(5) of Cr.P.C. statements of Gunasekaran, Rajendran, N.S.Ravindran, T.Rajendran, Selvaraj, Ganesan, Bose Ramalingam and A.J.S.Irudhayaraj and their statements are marked as Ex.P.25 to 33 respectively. P.W.26, Mohan was the investigating officer, who conducted preliminary investigation of the case.

21.The entire prosecution case revolves P.Ws.10 to 13 and 24. To some extent, the District Cell Officer P.W.4 and P.W.23 are relevant to substantive the statements recorded prior to registration of First Information Report. In the present case, from the above evidence, this Court has to analyse whether there was any demand and acceptance.

22.On perusal of witnesses, one set of witnesses have deposed that they have paid Rs.5,000/~ each to the 1st accused for Deepavali gift. Another set of people have deposed that they have paid Rs.5,000/~ each to the 1st accused to rectify the mistakes being committed by them in their official work and not to take any coercive steps. However, accepting amount in any form is not legally authorised one. Perusal of the evidence would show that there was a meeting on 24.09.2002, in which a message has been informed to all the ICOs of Tirunelveli, Virudhunagar and Madurai Districts through the second accused that each of them have to pay a sum of Rs.5,000/~ each to the 1st accused and that was clearly established through the evidence of P.Ws.10 to 13.

23.The learned senior counsel appearing for the appellant extraneously stressed that the demand and the motive of receiving the amount was not established before the trial Court. The demand can be made through subordinate staff or by directly. In this case, P.Ws.10 and 11 paid the amount directly to the 1st accused. P.W.10 in his evidence stated that he was instructed by the 2nd accused that if he gives Rs.5,000/~ to the 1st accused, there would be no problem for them if they committed small mistakes in their official work to rectify the same. However, P.W.11 in his evidence stated that the 2nd instructed him to pay a sum of Rs.5,000/~ to the 1st accused towards Deepavali contribution. P.W.10 gave Rs.5,000/~ to the 1st accused in an envelope containing his name and designation. P.W.11 gave Rs.5,000/~ to the 1st accused directly. P.W.12 in his evidence has clearly deposed that the 2nd accused was instructed him to pay a sum of Rs.5,000/~ to the 1st accused to reduce his anger and accordingly, he gave the amount in an envelope. P.W.13 in his evidence has stated as per the instruction of the 1nd accused, he brought Rs.5,000/~ and when he entered into Suite, where the 1st accused stayed, he asked P.W.13 whether Jagadeesan conveyed the information to P.W.13, for which, P.W.13 told ?Yes? and kept the cover on the Teapoy, contained a sum of Rs.5,000/~. Perusal of the evidence of P.W.24 would also show that when he met the first accused, he asked whether he brought Rs.5,000/~ as per the instruction of the 2nd accused, for which, he gave a cover contained a sum of Rs.5,000/~ where his name and designation was written. The above evidence would clearly establish that as per the instruction of the 2nd accused, they gave a sum of Rs.5,000/~ each to the 1st accused for different purposes. Furthermore, P.W.15, a small business man also deposed that on 25.10.2002 at about 7.00 p.m., he met the 1st accused in

the Circuit House, he gave a sum of Rs.15,000/~ as he asked money for Deepavali. Therefore, this Court is of the view that the demand and acceptance of the 1st accused has been proved by the prosecution witnesses and there are sufficient evidence to implicate the accused for demand and acceptance.

24.The learned senior counsel submitted that mere recovery of money is not sufficient to convict the accused when substantial evidence are not reliable. To substantiate the said argument, he has has relied upon the following decisions:
(i)(2009)3 SCC 779? C.M.Girish Basu Vs. CBI,
(ii)(2009)6 SCC 587 ? A.Subair Vs. State of Kerala
(iii)(2011)6 SCC 450 ? State of Kerala & another Vs. C.P.Rao.
25.On a perusal of the above decisions, it make it clear that mere recovery of bribe amount discharged from the circumstances under which it was paid. In the same line of the decisions relied on by the learned senior counsel would categorically held in the case of V.Sejappa Vs. State reported in 2016)12 SCC 150, where all the above decisions were dealt with by the Hon-ble Supreme Court. In the above said decision, the Hon-ble Supreme Court, after elaborately discussed the earlier cases, categorically held that in order to constitute an offence under Section 7 of the Prevention of Corruption Act, ?proof of demand? is a sine qua non and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. There is no quarrel over the said proposition laid down by the Hon-ble Supreme Court. However, in the present case, the appellant is the Commissioner of Social Welfare Department and he decided to visit Tirunelveli, Virudhunagar and Madurai Districts for inspection and the evidence of P.Ws.10 to 13 and 24 clearly reveal that they have paid the amount to the accused and the said amount has also been recovered by way of seizure mahazer. If the recovery is proved, it is for the accused officer to establish that the amount received by him is only legal remuneration and not illegal gratification. Once demand and acceptance established in the manner known to law, then, the presumption shifted to the accused to disprove the prosecution case.
26.In the above decision, in para 21, the Hon-ble Supreme Court has held while invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. The Hon-ble Supreme Court makes it clear that before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. As held by the Hon-ble Supreme Court, in the present case, the prosecution has clearly established the fact throug the evidence of P.Ws.10 to 13 and 24 that all the ICOs paid the amount to the 1st accused for rectifying the small mistakes being committed by them during their official work and hence, it is for the 1st accused/appellant to disprove the prosecution case and rebut the presumption.

27.In this background, it is necessary to refer the following decision of the Hon-ble Apex Court relied on by the learned Additional Public

Prosecutor:
1.AIR 1958 Supreme Court 61 ? State of Madras V. Vaidyanatha Iyer, wherein, the Hon-ble Supreme Court, in para 14, has held as follows:
?14.The findings of the High Court in the present case are, to say the least, halting, and the approach to the whole ques~ tion has been such that it falls within what Mr. Justice Mahajan in State of Madhya Pradesh v. Ramakrishna Ganpatrao (1) described as acting perversely or otherwise improperly . Although the learned High Court Judge has in the begin~ ning of the judgment mentioned the presumption which arises under s. 4 of the Prevention of Corruption Act (II of 1947), the following passage in the judgment:

 in any case, the evidence is not enough to show that the explanation offered by the accused cannot reasonably be true, and so, the benefit of doubt must go to him,
is indicative of a disregard of the presumption which the law requires to be raised under s. 4. The relevant words of this section are:
 Where in any trial of an offence punishable under s.161 .....it is proved that an accused..... person has accepted..... any gratification (other than legal remuneration).....from any person,it shall be presumed unless thecontrary is proved that he accepted ..... that gratifica~ tion as a motive or reward such as is mentioned in the said section 161 .....
Therefore where it is proved that a gratification has been accepted, then the presumption shall at once arise under the section. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. It may here be mentioned that the legislature has chosen to use the words- shall presume- and not -may presume-, the former a presumption of law and latter of fact. Both these phrases have been de~ fined in the Indian Evidence Act, no doubt for the purpose of that Act, but s. 4 of the Prevention of Corruption Act is in part materia with the Evidence Act because it deals with a branch of law of evidence, e.g., presumptions, and there~ fore should have the same meaning. Shall presume has been defined in the Evidence Act as follows:
 Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.
It is a presumption of law and therefore it is obligatory on the court to raise this presumption in every case brought under s. 4 of the Prevention of Corruption Act because unlike the case of presumptions of fact, presumptions of law constitute a branch of jurisprudence. While giving the finding quoted above the learned judge seems to have disre~ garded the special rule of burden of proof under s. 4 and therefore his approach in this case has been on erroneous lines.?
2.(1986) 2 Supreme Court Cases 716 ? R.S.Nayak and A.R.Antulay and another, wherein, the Hon-ble Supreme Court, in paras 55 to 57, has held as follows:
?55.In the face of the pronounced view of this Court that the Minister is a public servant, no attempt was made either before the High Court or before us to argue that to the Chief Minister, ss. 161 and 165 of the Indian Penal Code would not apply. The main ingredients of the charge under s. 161, IPC, are :

(1)that the accused was a public servant;
(2)that he must be shown to have obtained from any person any gratification other than legal remuneration; and
(3)that the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person.
56.Ordinarily, when the first two ingredients are established by evidence, a rebuttable presumption arises in respect of the third. For the offence under s. 165, IPC the essential ingredients are :
(i) the accused was a public servant;
(ii) he accepted or obtained or agreed to accept or obtain a valuable thing without consideration or for an inadequate consideration knowing it to be inadequate;
(iii) the person giving the thing must be a person concerned or interested in or related to the person concerned in any proceeding or business transacted or about to be transacted by the government servant or having any connection with the official of him self or of any public servant to whom he is subordinate; and

(iv) the accused must have knowledge that the person giving the thing is so concerned or interested or related.

57.It has been pointed out by this Court in A. Vaidyanatha Iyer-s case (Supra) that s. 165 is so worded as to cover cases of corruption which do not come within ss. 161, 162 or 163. Indisputably the field under s. 165 is wider. If public servants are allowed to accept presents when they are prohibited under a penalty from accepting bribes, they would easily circumvent the prohibition by accepting the bribe in the shape of a present. The difference between the acceptance of a bribe made punishable under s. 161 and 165, IPC, is this : under the former section the present is taken as a motive or reward for abuse of office, under the latter section the question of motive or reward is wholly immaterial and the acceptance of a valuable thing without consideration or with inadequate consideration from a person who has or is likely to have any business to be transacted, is forbidden because though not taken as a motive or reward for showing any official favour, it is likely to influence the public servant to show official favour to the person giving such valuable thing. The provisions ofss.
161 and 165, IPC as also s. 5 of the Act are intended to keep the public servant free from corruption and thus ultimately ensure purity in public life. The evidence in the case, therefore, should have been judged keeping these aspects in view.?
3.(1997) 9 Supreme Court Cases 477 ? C.K.Damodaran Nair, wherein, this Hon-ble Supreme Court, in para 11 and 12, has held as follows:
?11. From a combined reading of Section 161 IPC and Section 4 (1) of the Act it is evident that if, in the instant case, the prosecution has succeeded in proving that the appellant was a public servant at the material time and that he had `accepted- or `obtained- Rs. 1,000/~ from P.W.9 as gratification not only the first two ingredients of the former would stand proved but also the third, in view of the presumption under the latter which the Court is bound to draw unless, of course, the appellant, in his turn, has succeeded in rebutting that presumption. According to Shorter Oxford

Dictionary `accept- means to take or receive with a `consenting mind-. Obviously such a `consent- can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. If an acquaintance of a public servant in expectation and with the hope that in future, if need be, he would be able to get some official favour from him, voluntarily offers any gratification and if the public servant willingly takes or receives such gratification it would certainly amount to `acceptance- within the meaning of Section 161IPC. It cannot be said, therefore, as an abstract proposition of law, that without a prior demand there cannot be `acceptance-.

12.The position will, however, be different so far as an offence under Section 5 (1)(d) read with Section 5(2) of the Act is concerned. For such an offence prosecution has to prove that the accused `obtained- the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1)of the Act as it is available only in respect of offences under Section 5(1)(a) and (b) ~ and not underSection 5(1)(c), (d) or (e) of the Act. `Obtain- means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1) (d) of the Act unlike an offence under Section 161 IPC, which, as noticed above, can be, established by proof of either `acceptance- ~ or `obtainment-.?
4.(2000) 5 Supreme Court Cases 88 ~ State of M.P. V. Ram Singh, wherein, this Hon-ble Supreme Court has held in para 12, has held as follows:
?12.For the purposes of deciding these appeals reference to Sections 13 and 17 of the Act is necessary.Section 13 deals with the criminal misconduct of the public servants and prescribes the punishment for the commission of offence of criminal misconduct. A public servant is said to commit the offence of criminal misconduct:
(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or
(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or
(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted him or under his control as a public servant or allows any other person so to do; or
(d) if he,~~
(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
(ii) by abusing his position as a public servant, obtains for himself

or for any other person any valuable thing or pecuniary advantage; or
(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or
(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.
ExplanationFor the purposes of this section, known sources of income means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant
(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.
Section 17 deals with investigation into cases under the Act and provides:
17. Persons authorised to investigateNotwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,~~
(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
(b) in the metropolitan area of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub~section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;
(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank.
shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant;
Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefore without a warrant;
Provided further that an offence referred to in clause (e) of sub~ section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.
This Section provides that no police officer below the rank of an Inspector in the case of Delhi Special Police Establishment, an Assistant Commissioner of Police in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and any other metropolitan area notified as such and Dy.Superintendent of Police or a police officer of the equivalent rank shall investigate an offence punishable under the Act without prior order of the metropolitan Magistrate or a Magistrate of the First Class, as the case may be, or make any arrest thereof without warrant. According to the first proviso if a police officer not below the rank of an Inspector of Police is authorised by the Government in this behalf by general or special order, he can also investigate in such offences without the order of Metropolitan Magistrate or the Magistrate of First Class, as the case may be, or make arrest thereof without a warrant. Regarding compliance of this part of the section there is no controversy in the present appeals. However, the second proviso provides

that where an offence referred to in clause (e) of sub~section (1) of section 13 is sought to be investigated, such an investigation shall not be conducted without the order of a Police Officer not below the rank of a Superintendent of Police. The interpretation of this proviso is involved in the present controversy.?

28.On a perusal of the above decisions particularly in the case of R.S.Nayak, the Hon-ble Supreme Court has clearly held that the main ingredients of the charge under Section 161 of I.P.C. are that the accused to be a public servant and he must be shown to have obtained from any person any gratification other than legal remuneration and the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show in the exercise of his official function, favour or disfavour to any person. Further, it held that the public servants are prohibited under a penalty from accepting bribes.

29.The above decision makes it clear that acceptance means to take or receive with the consenting mind and that consent can be established not only by leading evidence of prior agreement but also from the circumstances surrounding the transaction itself without proof of such prior agreement. In the present case, there was a meeting on 24.09.2002 and some of the ICOs attended the meeting and they have been passed the message that during the vist of the 1st accused, they have to pay a sum of Rs.5,000/~ for not taking coercive steps for their small mistakes being committed by them during their official work.

30.In view of above discussion, this Court is of the view that the prosecution has established the case beyond reasonable doubt as against the 1st accused and the trial Court has also rightly found the accused guilty and convicted him.

31. In the result, this Court finds no merit in the appeal and hence, Criminal Appeal is dismissed and the conviction and sentence dated 07.08.2013, passed in Special Case No.23 of 2011, by the learned Special Judge for Trial of Prevention of Corruption Act Cases, Madurai, is confirmed. The Trial Court is directed to secure the appellant and commit him to prison to undergo the remaining period of sentence. The bail bond if any executed by the appellant/accused shall stand cancelled.

19.03.2019

Index :Yes/No
Internet : Yes/No
Arul

To

1.The Special Judge for Trial of Prevention of Corruption Act Cases, Madurai.

2.The Deputy Superintendent of Police,
Vigilance and Anti~Corruption Dept.
Madurai Detachmenti.

3. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

4.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.